OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~409~~ 7

BRUCE BOYNTON, PETITIONER,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1959

CERTIORARI GRANTED FEBRUARY 23, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1959~~ 1960

No. ~~409~~ 7

BRUCE BOYNTON, PETITIONER,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

INDEX

	Original	Print
Record from the Police Court of the City of Richmond, Commonwealth of Virginia		
Warrant and certificate of conviction	1	1
Record from the Hustings Court of the City of Richmond	3	4
Notice of tender of transcript of evidence and for certification thereof	3	4
Notice of appeal and assignments of error	4	5
Motion to dismiss warrant	6	6
Minute entry of hearing	7	7
Stipulation of facts and attachments	8	8
Attachment — Lease between Trailways Bus Terminal, Inc. and Bus Terminal Restaurant of Richmond, Inc., dated December 2, 1953	10	9
Attachment — Transcript of trial proceedings held in the Police Court of the City of Richmond, dated January 6, 1959	20	19
Appearances	20	19

RECORD PRESS, PRINTERS, NEW YORK, N. Y., MARCH 31, 1960

	Original	Print
Record from the Hustings Court of the City of Richmond—Continued		
Stipulation of facts and attachments—Continued		
Attachment — Transcript of trial proceedings held in the Police Court of the City of Richmond, dated January 6, 1959—Continued		
Testimony of Stanley Sylvanius Rush—		
direct	21	20
cross	24	21
Russell Forest Stout—		
direct	30	25
cross	31	26
redirect	31	26
recross	32	26
Bruce Boynton—		
direct	32	27
cross	37	30
Judgment	39	30
Order overruling motion to dismiss warrant and suspending execution of sentence	40	31
Order re transcript	41	32
Certification to transcript (omitted in printing)	42	32
Proceedings in the Supreme Court of Appeals of the Commonwealth of Virginia	43	32
Order refusing writ of error	43	32
Order staying execution and enforcement of judgment	44	33
Clerk's certificate (omitted)	45	33
Order allowing certiorari	46	34

[fol. 1]

IN POLICE COURT OF THE CITY OF RICHMOND, COMMONWEALTH OF VIRGINIA

WARRANT AND CERTIFICATE OF CONVICTION

No. 26717

COMMONWEALTH OF VIRGINIA
City of Richmond } To-Wit:

TO ANY POLICE OFFICER:

WHEREAS, STANLEY S. RUSH has this day made complaint and information on oath, before me, the undersigned, a Justice of the Peace of said city, that Bruce Boyington did on the 20 day of Dec., 1958. CM-21
Unlawfully trespass upon the premises at Trailway Bus Terminal, 9th and Broad Streets

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Police Court of the City of Richmond, the body of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon

√ Stanley S. Rush Address, Trailways Bus Terminal
as witnesses.

Given under my hand and seal, this 20 day of Dec., 1958.

Jno. McKenney (Seal)
Justice of the Peace

Amended Charge:

Unlawfully did remain on the premises of the Bus Terminal Restaurant of Richmond, Inc. after having been forbidden to do so by S. S. Rush, Assistant Manager of the said Bus Terminal Restaurant of Richmond, Inc., the said S. S. Rush being then and there lawfully in charge of said premises, there situate in the said City of Richmond

[fol. 2]

$300 bond
J. F. Mc

Docket No. 7083

COMMONWEALTH

WARRANT OF ARREST

CM 21

vs.

BRUCE BOYINGTON

Salman, Alabama

Executed this, the 20 day of December, 1958 by arresting the within named party, and by summoning the within named witnesses to appear in Police Court, December 22, 1958.

R. F. Stout

Upon examination of the within charge, I find the accused

Con 1/6/59

Guilty

Fined $10.00 & $6.25 costs

HAROLD C. MAURICE
Judge, Police Court

Stamp—Jan. 6, 1959

STATISTICS

Place of birth .....

Age ..... Color ..... Sex .....

Married ☐ Single ☐ Divorced ☐

Read ☐ Write ☐

Occupation .....

COSTS

Warrant	$ 1.50
Trial	2.00
Bail	
Arrest	1.00
Clerk, Htg. Ct.	1.25
Issuing, Search War.	
Serving Search War.	
Witness Attendance	.50
Commonwealth Atty.	
Total Costs	$ 6.25
Fine	10.00
Total	$16.25

IN POLICE JUSTICE'S COURT CITY OF RICHMOND

January 6, 1959

This is to certify that the within named Bruce Boynton, was this day tried by me for the charge set forth within this warrant, and that upon said trial he the said party was duly convicted of the within charge, and sentenced to pay a fine of $10.00 dollars, and costs $6.25 dollars, from which sentence he the said party appeals to the next term of Hustings Court.

Given under my hand this 6 day of January 1959.

HAROLD C. MAURICE, Police Justice.

[fol. 3]

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA,

v.

BRUCE BOYNTON.

To: T. Gray Hadden, Attorney for Commonwealth.

NOTICE OF TENDER OF TRANSCRIPT OF EVIDENCE AND FOR CERTIFICATION THEREOF

You are hereby notified that on the 8th day of April, 1959, at 9:30 o'clock A. M., or as soon thereafter as may be heard, in the Chambers of Honorable W. Moscoe Huntley, Judge of Hustings Court of City of Richmond, Virginia, the undersigned will tender the original transcript of the evidence, reduced to writing, in the above styled cause and respectfully ask the said Judge to certify the same as a true copy of the evidence in the above styled cause.

Bruce Boynton, By Martin A. Martin, Of Counsel for Appellant.

Martin A. Martin, Esquire, Clarence W. Newsome, Esq., 118 East Leigh Street, Richmond 19, Virginia, Attorneys for Appellant.

I accept due and timely service of the above notice.

T. Gray Hadden, Attorney for the Commonwealth.

[fol. 4]:

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

[Title omitted]

To: Thomas R. Miller, Clerk of Said Court:

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR—Filed April 7, 1959

Notice of Appeal

Notice is hereby given that Bruce Boynton appeals in this case and will apply for a writ of error and supersedeas.

Assignments of Error

The following are the errors assigned:

1. The court erred in refusing to strike the Commonwealth's evidence and dismiss this prosecution on the ground that the defendant was an interstate passenger traveling in interstate commerce and the local segregation rules and regulations of the carrier were not applicable to defendant and were no basis for the prosecution.

2. The court erred in refusing to strike the evidence and dismiss the prosecution in that the statute as applied in this case discriminated against defendant on account of his race and color and denied him the equal protection of the laws.

3. The court erred in holding that defendant violated the statute by violating the rules and regulations of the restaurant company since such rules and regulations denied the defendant due process of law and the equal protection of the laws.

4. The court erred in refusing to dismiss the prosecution on the ground that the statute as applied unconstitutionally attempts to regulate commerce.

[fol. 5] 5. The Court erred in refusing to dismiss the prosecution on the ground that the statute is an unconstitu-

tional and unlawful delegation of state police power to the restaurant company.

Bruce Boynton, By Martin A. Martin, Of Counsel.

April 7, 1959,

Service Accepted:

T. Gray Hadden, Attorney for the Commonwealth.

[fol. 6]

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO DISMISS WARRANT

Defendant moves the Court to dismiss the warrant issued against him for the following reasons:

1. Defendant, on the date of the warrant, was an interstate passenger and was in the restaurant operated by the carrier's lessee for the carrier's passengers and others. The statute as applied contravened his rights under the Interstate Commerce Clause to the Constitution and under the Interstate Commerce Act.

2. The said restaurant was an integral part of the bus service for its passengers traveling in interstate commerce, and the statute as applied to defendant in this case discriminates against him on account of his race and color, and denies him the equal protection of the laws.

3. In enforcing the custom or rules and regulations of the restaurant against this defendant on account of his race and color, the State denies this defendant due process of law and the equal protection of the laws under the Constitution of the United States.

4. The statute as applied is unconstitutional as it attempts to regulate the interstate commerce contrary to the Constitution and Laws of the United States.

5. The statute is unconstitutional as an unlawful delegation of State Police Power to the restaurant company.

Bruce Boynton, Defendant, By Martin A. Martin, Counsel.

Martin A. Martin, Esq., 118 East Leigh Street, Richmond 19, Virginia, Attorney for Defendant.

[fol. 7]

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

MINUTE ENTRY OF HEARING—February 4, 1959

Be it remembered that heretofore, to-wit; in the Police Court of this City the defendant was convicted as charged in the foregoing warrant, which conviction was appealed to this Court, and at a Hustings Court held for the City of Richmond, at the Courthouse, on the 4th day of February, 1959, the following order was entered:

Appeal.

COMMONWEALTH

vs

BRUCE BOYINGTON, Dft.

The said defendant this day appeared and was set to the bar in the custody of the Sergeant of this City and being arraigned pleaded not guilty to unlawfully remaining on the premises of the Bus Terminal Restaurant of Richmond, Inc., after having been forbidden to do so by S. S. Rush, Assistant Manager of the Bus Terminal Restaurant of Richmond, Inc., the said S. S. Rush being then and there lawfully in charge of said premises, there situate in the said City of Richmond, as charged. And with the consent of the accused, given in person, and the concurrence of the Court and the Attorney for the Commonwealth, the Court proceeded to hear and determine this case without a jury. And it being agreed to submit the case to the Court on the stenographic record of the evidence heard in the Police Court of this City, the Court doth continue this case to February 20, 1959, at 2:30 P. M. to hear argument of counsel. And thereupon the said defendant is released on continuing bail.

[fol. 8]

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

[Title omitted]

STIPULATION OF FACTS AND ATTACHMENTS

It is hereby stipulated and agreed by and between the Commonwealth of Virginia and Bruce Boynton, by their respective attorneys, as follows:

1. Stanley Sylvanius Rush, Russell Forest Stout, and Bruce Boynton if called and sworn as witnesses would give the same testimony which they gave at the hearing in Police Court on January 6, 1959, a transcript of which hearing is attached hereto and made a part hereof.

2. On December 20, 1958, the date of the offense charged in the warrant, there was no enforced racial segregation, by law or otherwise, in any of the facilities of the Trailways Bus Terminal, Ninth and Broad Streets, Richmond, Virginia, other than in the restaurant adjacent to said facilities and in the same building. The attorney for the Commonwealth objects to the admissibility of the facts stated in this paragraph on the grounds that they are immaterial [fol. 9] and irrelevant to the issues of the case.

3. Attached hereto is a true and correct copy of the lease in force and effect between Trailways Bus Terminal, Inc., and Bus Terminal Restaurant of Richmond, Inc., on December 20, 1958, the date of the offense charged in the warrant; and the Bus Terminal Restaurant of Richmond, Inc., was operating under said lease at said time. The defendant, by counsel, objects to the admissibility of the facts stated in this paragraph on the grounds that they are immaterial and irrelevant to the issues of the case.

Commonwealth of Virginia, By T. Gray Hadden, Attorney for the Commonwealth.

Bruce Boynton, By Martin A. Martin, Counsel for the Defendant.

[fol. 10]

ATTACHMENT TO STIPULATION—LEASE BETWEEN TRAILWAYS BUS TERMINAL, INC., AND BUS TERMINAL RESTAURANT OF RICHMOND, INC., DATED DECEMBER 2, 1953

This Agreement, made and entered into this 2nd day of December, 1953, by and between Trailways Bus Terminal, Inc., a Virginia corporation with its principal offices in the City of Richmond, Virginia, party of the first part, hereinafter called "Lessor", and Bus Terminal Restaurant of Richmond, Inc., a Virginia corporation with its principal offices in Norfolk, Virginia, party of the second part, hereinafter called "Lessee".

WITNESSETH:

That Whereas, Lessor is constructing a bus station in the City of Richmond, Virginia, on the premises located at the Northwest corner of Broad and Ninth Streets; and

Whereas, there is contained in said bus station facilities for the operation of a restaurant, soda fountain, and news stand; and

Whereas, Lessee desires to lease from Lessor facilities for the operation of the restaurant, soda fountain, and news stand, hereinafter fully described, for the term and upon the terms and conditions hereinafter specifically set forth;

Now, Therefore, This Agreement Witnesseth: That the parties hereto do mutually covenant and agree as follows:

LESSOR'S COVENANTS

Lessor, in consideration of the sums to be paid by Lessee, as hereinafter provided, and of the covenants and agreements herein expressed, hereby covenants and agrees with Lessee as follows:

1. Lessor does hereby lease and demise unto Lessee subject to the terms and conditions hereof, for the term and at the rental herein provided for, space in the said Trailways Bus Station, for use by Lessee as a restaurant, lunchroom, soda fountain, and news stand, which said space is more particularly described as follows:

That certain space in the basement and on the ground floor of the Trailways Bus Terminal to be constructed at the Northwest corner of Broad and Ninth Streets in the City of Richmond, Virginia, and is shown outlined in red on the two diagrams hereto attached and made a part hereof, marked Exhibit A and Exhibit B, respectively.

2. Lessor hereby grants to Lessee for the term and at the compensation hereinafter mentioned, and upon the covenants, conditions, limitations, and agreements hereinafter contained, the sole and exclusive right, permission, license and privilege to sell and serve in the demised space, newspapers, periodicals, magazines, books, stationery, cigars, [fol. 11] cigarettes, tobacco, food; meals, edibles of all kind, candy, confections, gum, soda water, soft drinks, ice cream, fruit, popcorn, nuts, souvenirs, toys, novelties, and all other articles and commodities, commonly sold at news stands, cigar stands, restaurants, soda fountains, and lunch counters; provided, however, that Lessee shall not operate in or upon the demised premises any coin controlled machines or vending machines of any kind or nature whatsoever except upon written consent of Lessor.

3. The right, permission, and license hereby granted to Lessee by Lessor is exclusive, and Lessor shall not sell, or grant similar permission for the sale of the same, or similar articles by any other person, firm or corporation in any other part of said bus station, or on any of the grounds adjacent thereto over which Lessor has control.

4. Lessor shall keep and maintain the building in which the Lessee's premises are situated in good order, condition and repair, including the painting of the interior walls of the leased premises at such time or times as in the opinion of the Lessor might be reasonably necessary.

5. Lessor shall furnish overhead lights, water and heat for the demised premises; provided, however, that Lessee shall furnish, at its own expense, electricity for the heating of water or for any other purpose that electricity might be used by Lessee except for overhead lights.

Lessee's Covenants

Lessee hereby covenants and agrees with Lessor as follows:

6. Lessee shall accept, lease and use, subject to the conditions and for the term hereof, the leased premises as aforesaid, and shall use said space and facilities for the installation, maintenance and operation of a restaurant, lunch room, soda fountain and news stand, and for no other purpose, with the privilege to sell in the demised premises, newspapers, periodicals, magazines, books, stationery, cigars, cigarettes, tobacco, confectionery, candy, popcorn, [fol. 12] peanuts, novelties, flowers, soda water, soft drinks, ice cream, and to sell such other articles and food stuffs in connection with the operation of the restaurant, lunch room, soda fountain, and news stand as are customarily sold in the regular course of business of restaurants, lunch rooms, soda fountains, and news stands. The prices charged by Lessee therefor shall be just and reasonable. No obscene, indecent, or other objectional publications, or photographs shall be offered for sale. Beer and wine shall not be sold on the leased premises.

7. Lessee agrees to discontinue the sale of any commodity that may be objectionable to the Lessor, and Lessee further agrees that it will obtain permission from Lessor to sell any commodity not usually sold or installed in a bus terminal concession before so doing.

8. As a basis for computing the rental due hereunder Lessee shall furnish to Lessor on or before the fifth day of each calendar month during the term hereof a full and complete, true and accurate statement showing the gross receipts of Lessee from the operation of the restaurant, lunch room, soda fountain, and news stand herein provided for during the preceding month.

9. Lessee agrees to pay to Lessor, at its office in the City of Richmond, Virginia, on or before the tenth day of each calendar month during the term hereof, as rental for the premises demised and leased herein, and as compensation for the right, permission, license, and privilege hereby granted, rental computed as follows:

(a) The sum of $30,000.00 annually for gross receipts of Lessee from sales of Lessee upon the leased premises up to and including the total annual sum of $275,000.00, which said rental shall be payable in advance at the rate of $2,500.00 per month, on or before the fifth day of each calendar month during the term hereof.

(b) For gross receipts of Lessee for sales made by Lessee upon said leased premises in excess of the sum of $275,000.00 annually, Lessee shall pay unto Lessor the additional sum of twelve per cent (12%) of all gross receipts of Lessee in excess of said sum of $275,000.00, which said rental shall be due and payable by Lessee within ten (10) days from the end of each year during the term hereof. The statements [fol. 13] furnished by Lessor by Lessee under the provisions of paragraph 8 hereof shall be used in computing such additional rental that might be due by Lessee to Lessor at the end of each year of the term hereof.

The term "Gross Receipts", as herein used shall not include the receipts by Lessee from the sale of tobacco products on the demised premises.

Lessee shall also deduct from said gross receipts all sales taxes and federal excise taxes in the manner prescribed by law for the purpose of computing the rental due Lessor.

10. Lessee shall equip the restaurant, lunch room, soda fountain, and news stand at its own expense with the necessary movable fixtures and furniture and fixed equipment, including counters, tables, chairs, kitchen equipment, soda fountain, news stand, stoves, refrigerators and any and all equipment which may be reasonably necessary or incident to the operation of a restaurant, lunch room, soda fountain, or news stand. Such equipment, fixtures, and furniture shall be maintained and kept in first class condition, good order and repair by Lessee at all times at Lessee's own expense, and Lessee shall replace such equipment, fixtures and furniture with articles of the same kind and equally good when necessary in the opinion of Lessor. Lessee shall obtain the approval of Lessor as to the quality of all the equipment, fixtures and furniture, to be installed by Lessee upon the leased premises.

11. Lessee shall equip said restaurant, lunch room, soda fountain, and news stand at its own expense with the necessary silver ware, china ware, glass ware, linen, kitchen utensils, or any and all articles necessary or used in connection with any or all of the foregoing, and Lessee shall maintain such equipment in good order and repair at all times and shall renew the same when necessary.

12. All equipment, fixtures, and furniture to be installed by Lessee upon the demised premises shall be approved by Lessor in writing, as to the quality of any and all such equipment, fixtures, and furniture; and if at any time during the term hereof Lessee desires to change the location, manner and means of installing any equipment necessary to connect with plumbing, heating, gas, or electric wiring facilities contained in said bus station Lessee shall obtain [fol. 14] prior approval in writing of Lessor before making any such change. Such changes, installations, and connections shall be at *Lessee's sole* expense.

13. Lessee shall pay for all electric current and electric power used in connection with the demised premises (except for overhead lights), shall pay for all gas used in connection with the operation of the restaurant, lunch room, soda fountain, and news stand by Lessee, and shall furnish at Lessee's own expense such facilities and appliances as are used by Lessee for the heating of water in connection with the use of said leased and demised premises. In the event of the failure of Lessee to pay any or all of any such charges, Lessor at its option shall have the right to pay or advance the same in behalf of Lessee, and in such event such payments, or advancements made by Lessor in behalf of Lessee shall be chargeable to or added to the rental due hereunder by Lessee to Lessor.

14. Lessee shall at all times maintain said leased facilities in good order, and at the expiration of the term hereof, or upon surrender of possession of said leased premises to Lessor by reason of default by Lessee, as herein provided for, the said leased premises will be surrendered to Lessor in the same condition as at commencement of the term hereof, ordinary wear and tear excepted.

15. Lessee shall and does hereby assume all risk of loss or injury to property or persons of all officers, agents and

employees or customers of said Lessee, or other persons coming upon the leased premises at the instance of or with the consent or knowledge of Lessee, and Lessee shall and does hereby agree to indemnify and save harmless Lessor from and for any and all claims, demands, suits, judgments, costs or expenses on account of such loss or injury. If suit be brought again Lessor upon any claim in respect of which under the terms hereof Lessor is entitled to protection and indemnity, Lessee, upon notice of such suit, shall assume the defense thereof.

Lessee covenants that it will carry public liability insurance in a company or companies satisfactory to Lessor in an amount of not less than Twenty-five Thousand Dollars ($25,000.00) to cover any or all of the foregoing, which insurance shall run in favor of Lessee and Lessor.

[fol. 15] 16. Lessee shall not, at any time of the term hereof, make any alteration or addition in or to the leased premises without the prior written consent and approval of Lessor.

17. Lessee shall not assign or sublease the premises hereby leased, or any part thereof, or assign or transfer any right, permission, license or privilege hereby granted without first obtaining the written consent of the Lessor.

18. Lessee's employees shall be neat and clean in appearance, and the operation of the restaurant and the said stands shall be in keeping with the character of service maintained in an up-to-date, modern bus terminal. Any employees not conducting themselves in keeping with the requirements of this service or found to be of unsatisfactory character shall be reported by the Lessor to the Lessee for correction and if same is not corrected within a reasonable time, the Lessor may request removal of or dismissal of such unsatisfactory employees. Neither the Lessee nor its employees shall be allowed to perform any terminal service other than that pertaining to the operations outlined in this contract; nor shall Lessee or its employees sell transportation of any kind or give information pertaining to schedules, rates or transportation matters, but shall refer all such inquiries to the proper agents of Lessor.

19. Lessee shall maintain and operate the restaurant and lunch room in the demised premises in a manner so as

to keep a Grade A certificate therefor, and upon the failure of Lessee to so do, Lessor may terminate this lease in the manner described in paragraph 27 hereof: provided, however, that if and in the event the restaurant and lunch room in the demised premises shall receive a rating lower than a Grade A certificate through no fault of Lessee, because of conditions prevailing in said bus station then the right of Lessor to terminate this agreement because of such rating shall not become effective until Lessor has corrected such conditions in the bus station premises that caused such low rating.

MUTUAL COVENANTS

The parties hereto severally covenant and agree with each other as follows:

[fol. 16] 20. This Agreement in every provision hereof shall insure to the benefit of and be binding upon Lessor and Lessee, and their respective heirs, successors, and assigns. The words "Lessor" and "Lessee" wherever used herein shall include the heirs, successors, and assigns of the respective parties hereto.

21. In the event the station building in which the leased premises are located is rendered wholly untenatable by fire or otherwise, Lessor may at its option, either immediately cancel or terminate this lease, or else, to restore or rebuild within a reasonable time said bus station building including the premises, leased hereunder, in the same condition at they were at the time of the commencement of the term hereof. In the event of such cancellation and termination of said lease by Lessor, the rental due by Lessee shall cease on and as of the date of such termination, and in the event the premises are rebuilt or restored, Lessee shall not pay rent to Lessor during such term as the premises are wholly untenantable.

22. Any notice to be given or required to be given to the Lessee under the terms hereof shall be deemed sufficient if delivered or mailed to the agent of Lessee in charge of the demised premises, and any notice given or required to be given to Lessor shall be deemed sufficient if delivered or mailed to Lessor addressed to the General Manager, Trailways Bus Terminal, Inc., Richmond, Virginia.

23. Lessee shall pay any and all taxes of any kind or nature whatsoever, including license for privilege taxes, that are lawfully due and payable to any existing governmental body arising from or in connection with the business conducted by Lessee on leased premises, or on the furniture, fixtures and equipment installed therein by Lessee.

24. Lessor shall operate said bus terminal in said bus station building in accordance with the rules and regulations of any lawful governmental agency having jurisdiction thereof; and it is understood by and between the parties hereto that this Agreement and all provisions herein contained are subject to all valid rules and regulations of such regulatory authorities having jurisdiction thereof during the full term hereof. Lessee shall comply with all the ordinances of the City of Richmond, and the laws of the United States and the State of Virginia in respect to the conduct of business of Lessee on the demised premises.

[fol. 17] 25. Lessee shall not make any sales on buses operating in and out said bus station; but sales through the windows of said buses may be made by Lessee, provided, however, that Lessee shall cease making sales through windows of buses within thirty (30) days after receipt of notice in writing from Lessor to terminate such sales.

26. Lessee hereby grants to Lessor the right at any and all times hereof to examine the books, records, cash register accounts and vouchers of Lessee for the purpose of verifying the accuracy of gross receipts of Lessee as are furnished to Lessor under the terms hereof. It is understood that such examination or audits shall be made by Lessor at least semi-annually during the term hereof.

27. If Lessee shall fail to pay to Lessor any sum payable by Lessee hereunder on or before the date when the same shall become due, or shall fail to perform, or comply with any covenant or condition contained herein, and such default shall continue for a period of ten (10) days after notice in writing from Lessor to Lessee, then and in such event Lessor shall have and is hereby given, the right of its election to exclude Lessee from the use of the leased premises, and upon giving ten (10) days notice in writing

of such election to Lessee, all rights of Lessee to use the leased premises, and any and all other rights of Lessee hereunder shall then and there be terminated and Lessor shall have the right to enter upon the demised premises; but such termination shall not relieve Lessee from any liability that might have been accrued prior to the date of such termination.

28. Upon the termination of this Agreement, Lessee shall promptly surrender to the Lessor possession of the premises hereby leased, exclusive of stands, counters, soda fountain, and other equipment furnished or installed by or at the expense of the Lessee, which are to be deemed the personal property of the Lessee and may be removed by him, provided Lessee is not in arrears in rent, and in the event Lessee is in arrears, then Lessor may sell so much of said personal property as is necessary to satisfy the claims for rent. Upon the termination of the Agreement, Lessee shall promptly remove all equipment, fixtures, and furniture installed by Lessee in the demised premises, at Lessee's sole expense, and restore the premises to the same condition that they were at the commencement of the terms hereof, ordinary wear and tear excepted.

[fol. 18] 29. The term hereof shall be for the period of five (5) years, beginning Dec 2, 1953, and ending Dec 2, 1958; provided, however, that this lease shall be automatically renewed for an additional term of five (5) years unless either party hereto shall notify the other party hereto, in writing at least ninety (90) days prior to the expiration date of the five-year term hereof, of the desire of such party to cancel and terminate this lease. In the event the leased premises described in paragraph 1 hereof are not completed and ready for occupancy by Dec 2, 1953, then and in such event the term hereof shall begin on and as of the date that said leased premises are completed and are ready for occupancy and shall continue for the full term of five (5) years thereafter.

In Witness Whereof, the parties hereto have executed this instrument on the day and year first above written.

Trailways Bus Terminal, Inc.
By /s/ R. C. Hoffman, Jr.
President

ATTEST:
/s/ R. B. SMALL
Secretary

BUS TERMINAL RESTAURANT OF RICHMOND, INC.
By /s/ J. BERNARD PARKER
Pres.

ATTEST:
/s/ BRYCE WAGONER
Secretary

(ADD APPROPRIATE ACKNOWLEDGMENTS)

[fol. 19] STATE OF NORTH CAROLINA
COUNTY OF WAKE, To-wit:

I, Daisy A. Harris, a notary public in and for the City and State aforesaid do hereby certify that R. C. Hoffman, Jr., and R. B. Small, whose names are signed to the foregoing writing bearing date on the 2nd day of December, 1953, as President and Secretary of TRAILWAYS BUS TERMINAL, INC., have acknowledged the same before me in my City aforesaid.

Given under my hand this 7th day of January, 1954.

My commission expires on the 29th day of April, 1955.

/s/ DAISY A. HARRIS
Notary Public

STATE OF VIRGINIA
CITY OF NORFOLK, To-wit:

I, G. A. Callahan, a notary public in and for the City and State aforesaid do hereby certify that J. Bernard Parker and Bryce Wagoner, whose names are signed to the foregoing writing bearing date on the 2nd day of Dec. 1953, as President and Secretary of BUS TERMINAL RESTAURANT OF RICHMOND, INC. have acknowledged the same before me in my City aforesaid.

Given under my hand this 19th day of December, 1953.

My commission expires on the 13th day of May, 1957.

/s/ G. A. CALLAHAN
Notary Public

[fol. 20]

ATTACHMENT TO STIPULATION

VIRGINIA:

IN THE POLICE COURT OF THE CITY OF RICHMOND

CITY OF RICHMOND

v.

BRUCE BOYNTON

TRIAL PROCEEDINGS

January 6, 1959.

10:15 a. m.

Before Honorable Harold Maurice, Judge

APPEARANCES:

Charles E. Maurice, Assistant Commonwealth's Attorney, For the City of Richmond.

Hill, Martin, and Olphin, Counsel for Defendant, By Martin A. Martin.

Also present:

Walter E. Rogers, For the Bus Terminal Restaurant Company, Incorporated.

[fol. 21] PROCEEDINGS

Mr. Rogers: Your Honor, I represent the Richmond Bus Terminal Restaurant and am appearing with the Commonwealth's Attorney.

The Court: Bruce Boynton, on the 20th day of December, did trespass upon the premises at the Trailways Bus Terminal, Ninth and Broad Streets. What is his plea?

Mr. Martin: Not guilty.

STANLEY SYLVANIUS RUSH, having been sworn, in behalf of the City testified as follows:

Direct examination.

By Mr. Rogers:

Q. Mr. Rush, you are the Assistant Manager of the Bus Terminal Restaurant in Richmond, Incorporated, are you not?

A. Yes, sir.

Q. That is located at the Trailways Bus Terminal here at Ninth and Broad?

A. That's right, sir.

Mr. Martin: Pardon me a minute. I wonder if we could get his full name and address for the record.

[fol. 22] By Mr. Rogers:

Q. Will you state your full name and address?

A. My name is Stanley Sylvanius Rush. I live at 2200 Mimosa Street, Richmond, Virginia.

Q. And you are Assistant Manager of the Richmond Bus Terminal Restaurant in Richmond?

A. I am.

Q. That company leases space in the building there at Ninth and Broad for the purpose of operating a restaurant, does it not?

A. Yes, sir.

Q. The company that operates the restaurant is not affiliated in any way with the bus company, is it?

A. No, sir, it is not.

Q. The bus company has no control over the operation of the restaurant?

A. None whatsoever.

Q. What facilities do you have at the restaurant for serving both white and colored, Mr. Rush?

A. We have a restaurant on one side for colored; we have one restaurant for the white.

Q. Were you on duty on December 22, when the defendant Bruce Boynton came into the white portion of the restaurant and asked to be served?

A. Yes, I was.

[fol. 23] Q. Will you tell the Court what happened?

A. When he came in he seated himself in the white section. He was asked to leave and go over. I explained to him that they had a restaurant on the other side for the colored and we would appreciate it if he would go over there, at which time he demanded service there. I went to him then and talked to him and tried to explain to him the situation, at which time he refused to leave, demanded service.

I then called the officer to come over and see if he could get him to leave, that he was causing a disturbance there, which the officer could, he went out and tried to explain to him the situation and came back and told me—asked me if I wanted a warrant for this man's arrest and I told him I would rather not, if he would stay out of the place that that would be all that was necessary, which I looked up and he had returned to the restaurant and seated himself again. After seating, he got up and came forward towards the end of the counter, which is part of the aisle way behind the counter section, at which time I asked the officer to call the magistrate, that I would issue a warrant for his arrest for trespassing.

Q. You definitely asked him and instructed him to leave the white portion of the restaurant and advised him he could be served in the colored portion?

A. I did.

[fol. 24] Q. And he returned after you had instructed him that he could not be served in the white section?

A. Yes, sir, he did.

Mr. Rogers: That is all.

Cross examination.

By Mr. Martin:

Q. Mr. Rush, I just want to be clear on this. You say you are Assistant Manager of what?

A. Bus Terminal Restaurant Company.

Q. Company, Incorporated?
A. That's right.
Q. A Virginia corporation?
A. Yes, sir.
Q. You are the Assistant Manager?
A. I am Assistant Manager.
Q. What first called your attention to this young man here being in the restaurant? Did one of the waitresses call your attention to the fact?
A. I had seen him in there. At the time I was busy and couldn't get to him myself to explain the situation, which everyone has been instructed to always—
Q. Just a minute. I am not asking about your instructions. Who first called your attention to him being in the restaurant?
[fol. 25] A. I saw him myself.
Q. Did a waitress later call your attention to the fact?
A. Yes.
Q. You say you have two restaurants there, one customarily used for colored people and one white?
A. That's right.
Q. What is the approximate size of the colored restaurant?
A. I believe the seating capacity is that of about fifty.
Q. What is the area space?
A. I don't know that right offhand. I can give you that.
Q. About twenty-five or thirty feet?
A. No, it is more than that.
Q. This happened on a Saturday night, I believe, December 22?
A. Yes, sir.
Q. About what time?
A. Approximately ten-thirty.
Q. Colored restaurant was crowded at that time?
A. No. We had customers in there, but there was seating capacity.
Q. What is the seating capacity of the white restaurant?
[fol. 26] A. That, I don't know exactly either, I would have to look that up.
Q. You have tables and stools at the counter in the white restaurant?
A. Yes, sir.

Q. Where was this defendant seated, at the table or stool?

A. At a stool.

Q. He was seated at a stool at the counter?

A. Yes, sir.

Q. When this waitress complained, didn't she tell you that he was asking for a sandwich and cup of tea?

A. She didn't tell me what he was asking for.

Q. But he was asking for service?

A. Yes, sir.

Q. You knew that he was a passenger on the Trailways bus?

A. At that time, no.

Q. You didn't?

A. No.

Q. Before he was arrested, you knew he was a passenger on the bus, didn't you?

A. But I said at that time.

Q. Didn't he show you a ticket? Didn't he tell you that [fol. 27] he was a passenger on the Trailways bus from Washington going to Montgomery, Alabama?

A. After I had sent to the magistrate for his arrest, then his ticket was produced.

Q. And you knew at the time the magistrate came and you issued the warrant that he was a passenger on this bus going from Washington to Montgomery, Alabama?

A. I said until the magistrate issued the warrant was the ticket then produced.

Q. Did he do anything else besides ask for service there at the restaurant and just remain there when he was asked to leave?

A. No, he got up and walked up and down the aisle demanding service from the waitress and telling her that she had better talk to me and have service right there or else he was going to do this, that, and the other.

Q. Your restaurant is primarily or partly for the service of the passengers on the Trailways bus?

A. For the white on that side, colored on the other.

Q. It is for passengers on the bus, for white passengers?

A. Not necessarily, no. We have quite a bit of business here from local people.

Q. If he had been a white person, would you have refused [fol. 28] him service, if he had been a white passenger on a Trailways bus at that time, that particular time, would you have refused him service?

A. Walking up and down the aisle, demanding service immediately, I probably would have.

Q. When he was setting at the stool at the counter asking for a sandwich, if he had been a white person would you have given him service?

Mr. Rogers: If Your Honor please, this seems to be going afield. The testimony indicates that the restaurant is operated entirely separate from the bus terminal and he was asked to leave.

The Court: He can ask the question, but I do not think it is going to be anything to connect the bus company up with the restaurant. Go ahead.

Mr. Martin: Will you answer that question?

A. If he had been—

By Mr. Martin:

Q. If he had been a white person seated at the counter on a stool, would you have instructed the waitress to give him service?

A. I said no, not necessarily.

Q. Why?

[fol. 29] A. If any passenger or any person comes in and starts creating a disturbance, we immediately ask them to leave.

Q. Mr. Rush, I did not ask you that question. Can't you answer the question that I asked you? I asked if he was a white passenger seated at the stool, as you said he was seated at the counter, and asked for service, would you have given him service?

A. I said no, not necessarily.

Q. Why not?

A. Anyone that creates a disturbance I would have asked him to leave, which he was doing at that time when he started that. That is when he returned the second time is when I got the warrant, not the first time.

Q. Why didn't you get a warrant charging him with creating a disturbance if he was creating a disturbance?

A. Because I only wanted trespassing.

Q. Why?

A. Because I had asked him to leave and he refused to leave.

Q. So the only crime you know that he was guilty of was trespassing?

A. That is what I took the warrant for.

Q. When this waitress came to you and told you that he was over there, didn't she tell you that he was asking [fol. 30] to be served?

A. Yes.

Q. And she refused to serve him?

A. Yes.

Q. Because of his race?

A. She refused to serve him because we have a restaurant on the other side, which she tried to explain to him.

Mr. Martin: That is all.

Mr. Rogers: No questions.

Russell Forest Stout, having been sworn in behalf of the City, testified as follows:

Direct examination.

By Mr. Rogers:

Q. You are the officer that made this arrest?

The Court: Let him state his name and occupation.

The Witness: Russell Forest Stout: patrolman, Richmond Police.

By Mr. Rogers:

Q. Officer Stout, you were on duty at the restaurant, at the Bus Terminal, at the time of this occurrence?

A. Yes, sir.

[fol. 31] Q. You are familiar with what took place?

A. Yes, sir.

Q. Is it substantially as related by Mr. Rush?
A. Yes, sir.

Mr. Rogers: No questions.

Cross examination.

By Mr. Martin:

Q. Did you see any disorderly conduct?
A. Not too much. He was disturbing the peace some.
Q. But just by being in there, a colored person in a white restaurant?
A. Not necessarily that. He was raising his voice a certain amount.
Q. There was no profane language nor cursing or anything?
A. No, I didn't hear any.
Q. No fighting or fussing?
A. No.

Redirect examination.

By Mr. Rogers:

Q. Was the waitress around when he was demanding service in the restaurant?
[fol. 32] A. I wasn't in there. He was standing up. Mr. Rush told me that he had.

Recross examination.

By Mr. Martin:

Q. And you arrested him and put him in the patrol wagon and took him to the station?
A. On the warrant.

Mr. Martin: Any other witness?
Mr. Rogers: No.

Evidence Adduced in Behalf of Defendant

Bruce Boynton, the defendant, was sworn, and in his own behalf testified as follows:

Direct examination.

By Mr. Martin:

Q. Will you state to the Court your name and your home address?

A. If it please the Court, my name is Bruce Boynton, and my home is address is 1315 Lapsley Street, Selma, Alabama.

Q. Are you at the present time attending school?

[fol. 33] A. Yes, sir, I am.

Q. Where?

A. I am a third-year student at Howard University, at law school.

Q. On this particular occasion, were you traveling from Washington, D. C., at school to your home in Selma, Alabama?

A. Yes, sir. I was traveling from Washington, D. C.

Q. Just answer the question. Were you traveling from Washington, D. C., to your home in Selma, Alabama?

A. Yes, sir.

Q. By Trailways bus?

A. Yes, by Trailway to Montgomery.

Q. Did you have a ticket entitling you to travel by Trailway bus from Washington to Montgomery, Alabama?

A. Yes, sir, I did.

Q. Is that a stub of that ticket (exhibiting)?

A. That is the stub.

Mr. Martin: If Your Honor please, I offer this in evidence.

(The ticket stub was exhibited and retained by counsel for the defendant.)

Q. What time did you board the Trailway bus in Wash-

[fol. 34] ington?

A. I boarded the Trailways bus at eight o'clock.

Q. What time did you arrive in Richmond?

A. About 10:40.

Q. Why did you get off the bus in Richmond?

A. I got off the bus in Richmond because I was hungry and we had a stopover of about forty minutes.

Q. Who told you about the stopover?

A. The bus driver, when he pulled the bus up to the stop at the terminal.

Q. At the time, did you know anybody in Richmond?

A. No, no one except a couple of students, classmates of mine.

Q. And the bus driver told you you had about a forty-minute layover and you went in the bus station for what purpose?

A. To get something to eat.

Q. Did you see the colored restaurant there?

A. Yes, sir, I did.

Q. What was the condition?

A. The colored restaurant appeared to be crowded and I proceeded to the other restaurant.

Q. Was that other restaurant crowded?

A. No, it wasn't.

Q. There are stools at the counter?

[fol. 35] A. Yes, sir.

Q. Vacant stools?

A. Vacant.

Q. Where did you sit?

A. I took one of the vacant stools at the counter.

Q. What did you say? Just tell the Court what happened.

A. Well, at the time that I sat down the waitress—one of the waitresses on duty came up to me and asked me to go over on the other side, that they had facilities over there. I told the waitress that the facilities over there were a bit crowded and also that I was an interstate passenger and that I could eat there at that restaurant. She told me that she had orders and it was customary not to serve me.

Whereupon I explained to her again that I was an interstate passenger and that I had a bus to catch in about thirty minutes, thirty or forty minutes, and that I would like something that wouldn't take too long to prepare.

Whereupon she suggested that I purchase a prepared sandwich, sandwich that was already made. I believe they had some several lined up to the counter there. So I ordered one of the sandwiches and tea with cream. She didn't write the order, but she went away and then came back and said that she couldn't serve me, she had orders not to serve me. Whereupon, I asked her to get someone who [fol. 36] could since she had orders not to and that I was an interstate passenger. She went away and Mr. Rush here appeared and told me that I couldn't be served and suggested that I go over on the other side.

At that time I pulled out my ticket, showed it to him, explained what that passenger was, and he asked me to move. He made a demand for me to move and I refused.

He went away and I sat there. The next thing that happened was that Officer 198 appeared and told me that I was under arrest. I explained to him that I was an interstate passenger also and he conferred, I believe, with Officer 66, who I later went into the custody of this officer, and they wrote out a warrant and I proceeded on the bus in the custody of Officer 198 and took my things off and disembarked from the bus.

Q. You were placed in a patrol wagon?

A. That is right.

Q. During this entire time, was any profane language used, any loud words, curse words, or any disorderly conduct?

A. No. I just emphatically, I suppose, expressed my point of view as being an interstate passenger, but not loud, not boisterous, and I remained sitting.

Q. Did you know any other place? Have you ever been in Richmond before?

[fol. 37] A. Not for a stop. I have passed through.

Q. Did you know any other place where you could get anything to eat within thirty or forty minutes?

A. No, I didn't.

Q. You say the colored restaurant was crowded at that time?

A. That is right.

Q. And the only thing you did, as I understand, was you saw the colored restaurant crowded, you went in the white

restaurant and sat at the stool and demanded service as a passenger on the Trailway bus?

A. That is right.

Q. They refused to serve you and ultimately you wound up being arrested?

A. Yes, sir.

Mr. Martin: That is all.

Cross examination.

By Mr. Rogers:

Q. To clear the record, both the management and the officer asked you to leave the white portion and advised you that you could be served in the colored portion of the restaurant?

A. He did make a demand that I leave.

Mr. Rogers: That is all.

[fol. 38] The Court: That is all of the case?

Mr. Martin: Yes, sir.

The Court: Find him guilty and fine him $10.00.

Mr. Martin: Note an appeal, sir.

(Whereupon, at 10:34 a. m., the trial was concluded.)

[fol. 39]

In the Hustings Court of the City of Richmond

Appeal.

Commonwealth

vs

Bruce Boyington, Dft.

Judgment—February 20, 1959

The said defendant this day again appeared and was set to the bar in the custody of the Sergeant of this City and after maturely considering the evidence doth find the said defendant guilty as charged and doth assess his fine at ten dollars.

Whereupon it is considered by the Court that the said Bruce Boyington pay and satisfy a fine of ten dollars and costs. And on his motion the execution of the said sentence is suspended during his good behavior until March 6, 1959.

[fol. 40]

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

[Title omitted]

ORDER OVERRULING MOTION TO DISMISS WARRANT AND SUSPENDING EXECUTION OF SENTENCE—March 6, 1959

The said defendant this day again appeared and was set to the bar in the custody of the Sergeant of this City and having been found guilty of unlawful trespass, as entered herein February 20, and execution of said sentence suspended to this day and the said defendant this day having filed his motion in writing to dismiss the warrant in this case, which motion was also made at the trial of this case February 20, 1959 and overruled by the Court, which motion the Court doth again overrule and to which action of the Court in overruling his said motion the said defendant notes an exception and time is given him not exceeding sixty days in which to present his bills of exceptions.

Thereupon the said defendant moved the Court to suspend the execution of the sentence to allow him to appeal to the Supreme Court of Appeals of Virginia, which motion the Court doth grant and the execution of the said sentence entered herein February 20, 1959, is this day suspended to May 26, 1959. And thereupon the said defendant entered into a recognizance in the sum of three hundred dollars with Roberta B. Shores, as surety, conditioned that if the said Bruce Boyington shall make his appearance before this Court May 26, 1959, to abide by and perform the judgment entered against him herein February 20, 1959, in the event the Supreme Court of Appeals should affirm same or refuse to grant a writ of error, or if same be granted it be afterwards dismissed, and in the meantime keep the peace and be of good behavior and not violate any of the laws of this Commonwealth, then the said recognizance to become null and void, else to remain in full force and virtue. And thereupon the said defendant is released.

[fol. 41]

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

[Title omitted]

ORDER RE TRANSCRIPT—April 8, 1959

The transcript of the evidence adduced, the objections to evidence and other incidents in the trial was this day signed and sealed by the Court and delivered to the Clerk of this Court and hereby made a part of the record in this case.

[fol. 42]

CERTIFICATION TO TRANSCRIPT OMITTED IN PRINTING

[fol. 43]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

ORDER REFUSING WRIT OF ERROR—June 19, 1959

The petition of Bruce Boynton for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond on the 20th day of February, 1959, in a prosecution by the Commonwealth against Bruce Boyington, alias Bruce Boynton, for a misdemeanor, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said Hustings Court.

[fol. 44]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

[Title omitted]

ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT —July 24, 1959

On consideration of the petition of Bruce Boynton, by counsel, for a stay of execution herein, in order that he may have reasonable time and opportunity to present to the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of this court, It Is Now Ordered that the execution and enforcement of the judgment of this court in the above-entitled case entered on June 19, 1959, be, and the same is hereby, stayed until the 17th day of September, 1959, on the expiration of which time the same may be enforced, unless the case has before that time been docketed in the Supreme Court of the United States, in which event enforcement thereof shall be stayed until the final determination of the case by that court.

The above stay, however, is not to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

Willis D. Miller, Justice of the Supreme Court of Appeals of Virginia.

[fol. 45] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 46]

SUPREME COURT OF THE UNITED STATES

No. 469, October Term, 1959

BRUCE BOYNTON, Petitioner,

vs.

VIRGINIA.

ORDER ALLOWING CERTIORARI—February 23, 1960

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the Commonwealth of Virginia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.